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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RODOLFO MADRIGAL MARTINEZ, JR.,

Defendant and Appellant.

C070078

(Super. Ct. No. CM034213)

Appointed counsel for defendant Rodolfo Madrigal Martinez, Jr., asked this court to review the record to determine if there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

Defendant was seen stabbing another man in downtown Chico. A police officer dispatched to the scene found that Gerardo Solozaro had an arm injury consistent with

having been stabbed. Solozaro told the officer he had been in a fight and he did not want anything done about his injury.

Solozaro previously admitted to police that he was a member of the Norteño gang. He had tattoos associated with the Norteños.

A police detective testified as an expert on gangs. The expert opined that defendant was a member of the Sureño gang based on the fact that defendant wore a blue shirt on the night of the stabbing (a color associated with the Sureños), he had tattoos associated with the Sureños, and he was living with an active Sureño gang member at the time of the incident. The expert further opined that stabbing a Norteño gang member in public would benefit the Sureño gang.

A jury convicted defendant of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and found true an enhancement allegation that he committed the offense for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(B)). The trial court sentenced defendant to seven years in state prison, imposed various fines and fees, and awarded 432 days of presentence credit (288 actual days and 144 conduct days).

## II

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.<sup>1</sup>

DISPOSITION

The judgment is affirmed.

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MAURO, J.

We concur:

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BLEASE, Acting P. J.

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MURRAY, J.

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<sup>1</sup> Recently, the California Supreme Court held in *People v. Rodriguez* (2012) 55 Cal.4th 1125 that the crime of participating in a criminal street gang (Pen. Code, § 186.22, subd. (a)) cannot be committed by a gang member acting alone. But that decision does not create an arguable issue here because the court in *Rodriguez* also indicated that a gang member acting alone can be subject to the Penal Code section 186.22, subdivision (b)(1) enhancement. (*Rodriguez*, at pp. 1138-1139 (lead opn. of Corrigan, J.); *id.* at p. 1141 (conc. opn. of Baxter J.).)